

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter Of)	
)	
Revision of the Commission's Rules To)	
To Ensure Compatibility with Enhanced)	CC Docket No. 94-102
911 Emergency Calling Systems)	
Systems)	
)	

**REPLY IN SUPPORT OF
PETITION FOR CLARIFICATION AND/OR DECLARATORY RULING**

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Dated: May 3, 2001

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The City of Richardson, Texas ("Richardson") hereby submits its reply in support of its Petition for Clarification and/or Declaratory Ruling (the "Richardson Pet.").

I. Summary

It is now apparent that there is a substantial controversy between public safety entities and wireless carriers over the proper interpretation of the Commission's rules as to when a Public Safety Answering Point ("PSAP") makes a valid request to a wireless carrier for Phase II enhanced 911 ("E911") service such that a carrier must provide such service. The carriers and the public safety entities have diametrically opposite views on this issue. The Commission must resolve this controversy by deciding Richardson's petition on the merits, and the Commission should adopt the interpretation urged by Richardson in its petition because that interpretation is the only interpretation which will "avoid potential delays in the provision of Phase II services." Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20852 (1999).

In particular, VoiceStream Wireless ("VoiceStream"), which summarily denied Richardson's request as invalid, has now sought to justify its denial by submitting Comments containing a series of outright misstatements about Richardson's situation, misstatements which

VoiceStream could have avoided if it had met with or called Richardson. For example, VoiceStream states that to its knowledge, the Richardson PSAP has not received the funding necessary to upgrade its CPE and E911 network nor has it issued a RFP for this new equipment. VoiceStream Comments at Pg. 11. VoiceStream could not have based its denial of Richardson's request on this speculation because VoiceStream has never met with, called, or visited Richardson to discuss these matters. Nevertheless, the truth is that Richardson has the necessary funds on hand, and Richardson is on track to have the necessary upgrades completed by October 1, 2001 based on its ongoing discussions with vendors. See attached Declaration of Dennis Moeller (affirming all factual statements in this reply). Had VoiceStream called or met with Richardson, VoiceStream would have learned that for over four years, Richardson has been depositing in a dedicated account the funds it has received from the Texas statewide wireless 911 fee, which now amounts to the sum which Richardson understands it will need for the upgrade. Similarly, Richardson has made substantial and concrete progress with its vendors, who have assured Richardson that the upgrades will be finished by October 1, 2001.¹

Thus, it is VoiceStream, not Richardson, who has made "unsupported assertion(s)." See VoiceStream Comments at Pg. 13. The Commission should not permit VoiceStream to shirk its obligations based on this baseless speculation. A carrier should not be permitted to deny a PSAP's request because the carrier arbitrarily and wrongly speculates that the PSAP lacks the funding or will not be ready.

¹VoiceStream also claims that PSAPs may believe wrongly that they are ready for Phase II by buying off-the-shelf mapping software and not ensuring that LECs update selective routers and ALI databases. VoiceStream Comments at Pg. 15. Richardson is aware that the maps must reflect latitude and longitude, and has been assured by its LEC that there is no issue relating to routers or the ALI database. The Commission should disregard VoiceStream's speculation.

VoiceStream contends that the Commission should not grant Richardson's petition because PSAPs will not be Phase II capable when they represent they will be, and VoiceStream cites its experience with Phase I to support this claim. Id. at Pg. 11. But, Richardson's Phase I experience with VoiceStream completely undermines this argument. Richardson made its Phase I request to VoiceStream on March 20, 2000. See Ex. A to Richardson Pet. To this day, and in violation of the Commission's six-month deadline, Richardson does not have Phase I service from VoiceStream, and VoiceStream has not provided any explanation for its failure to provide Phase I service as required. VoiceStream's failure to provide such service as required by the Commission's rules should persuade the Commission not to adopt the interpretation of the Phase II rules urged by VoiceStream, which is designed likewise to delay the provision of Phase II service by permitting VoiceStream to decide unilaterally, and without any factual basis, that a PSAP will not be ready for the service, when the truth is that just as VoiceStream has not moved to provide Phase I service, it is apparent that VoiceStream, having won a waiver of the Commission's E911 rules, is also trying to delay deployment of Phase II service.

Accordingly, VoiceStream's call for face-to-face meetings between carriers and PSAPs (VoiceStream Comments at Pg. 13) cannot be taken seriously. VoiceStream denied Richardson's request for Phase II without ever asking for a meeting. VoiceStream's plea that it cannot convert hundreds of PSAPs simultaneously provides no basis for denying the relief Richardson seeks. For the very reason that Richardson wanted to give VoiceStream plenty of notice, Richardson made its request to VoiceStream in March 2000. Rather than taking advantage of the time afforded by Richardson's request, VoiceStream summarily denied it, thereby causing the "problem" of which it now complains. The Commission should not credit VoiceStream's parade of horrors.

The comments filed by VoiceStream and the other carriers all repeat the same other arguments which have no merit. Neither the text of Section 20.18 (j) nor the Commission's E911 orders definitively answers the question presented by Richardson's petition, and therefore the Commission needs to issue a declaratory ruling to resolve the controversy. The rule does not say when a PSAP need be capable of utilizing the Phase II data, and the Commission's orders in the E911 proceeding do not provide a clear answer either. The Commission did clearly establish that it wanted "to avoid potential delays in the provision of vital Phase II services" and its goals are to "speed the actual implementation of E911" and bringing "(t)he substantial benefits of wireless E911 to the public interest and safety... without undue delay." Second Memorandum Opinion & Order, 14 FCC Rcd 20850, 20852 (1999); Third Report and Order, 14 FCC Rcd 17388, 17392 (1999). The claim that a grant of Richardson's petition will delay Phase II service (see VoiceStream and Sprint PCS Comments) is belied by the facts. The reports filed by the carriers with the Commission showed that to date, the carriers have received very few Phase II requests. The carriers have not shown that they are being deluged with requests from PSAPs who will not actually be ready when they represented they would be. Instead, many carriers (VoiceStream and its affiliates, AT&T and its affiliates, Nextel, Carolina PCS, and now possibly Cingular) have obtained or are requesting to waivers to put off implementing Phase II service. Given that Richardson has the funds on hand and will be ready by October 1st, a denial of Richardson's petition will certainly delay the provision of Phase II service to the citizens of Richardson.

The carriers point to a snippet in paragraph 69 of the Second Memorandum Opinion & Order in which the Commission, in justifying its decision to retain the cost recovery requirement for PSAPs, noted that carriers should not be forced to make investments in response to a PSAP

that is not ready to use the E911 information; but, the Commission was just saying that “(w)e view our cost recovery provision as a component of the PSAP’s capability of receiving and utilizing the data elements of the E911 services.” 14 FCC Rcd at 20878, ¶69. Richardson has a cost recovery mechanism and thus is ready to receive and utilize the data elements of the E911 services within the meaning of the passage in the Second Memorandum Opinion and Order on which the carriers rely. If a carrier doubts the representation of readiness by a PSAP, the carrier should be required to have some concrete, definite substantiation before denying the request. Just as the carriers are going to have to make substantial investments to initiate E911 service, the PSAPs are likewise going to have to spend considerable sums to complete their upgrades. No one’s good faith should be summarily dismissed, be they a carrier or a PSAP.

Moreover, Richardson’s petition is not procedurally defective and does not seek or require a rule change, contrary to the charge made by the carriers. A comparison of the comments filed by NENA APCO, and the North Carolina Wireless 911 Board versus the comments of the carriers shows a real controversy as to the proper interpretation of Section 20.18 (j), which does not say when a PSAP must be capable of receiving and utilizing Phase II data in order to trigger the carrier’s obligation. There is no need for the Commission to adopt a new rule; it merely needs to resolve the controversy as to what its rule means.

It is very regrettable that the public safety community and the wireless carriers are polarized on this issue. Without a doubt, public safety and wireless carriers are going to have to work together to bring the benefits of Phase II service to the public. But, Phase II will not work if a wireless carrier can arbitrarily reject a PSAP request based on uninformed, arbitrary speculation. VoiceStream wants Richardson to tone down its rhetoric, but offers neither Phase I nor Phase II for the citizens of Richardson and instead misrepresents the facts.

For all of these reasons, the Commission should adopt the interpretation urged by APCO, NENA, and the North Carolina Wireless 911 Board: a PSAP makes a valid request for Phase II service by informing the carrier that its equipment upgrades for Phase II service will be finalized prior to delivery of the service by the carrier and that it has an adequate cost recovery mechanism in place, and that a carrier is required to deliver Phase II service within six months after receiving such a request or by October 1, 2001, whichever is later, so that service is available to the PSAP when the equipment upgrades are completed.

**II. The Text of Section 20.18 (j) and the Commission's Orders
Do Not Resolve the Question Presented by Richardson's Petition**

The comments filed in response to Richardson's petition reveal a substantial disagreement over the proper interpretation of Section 20.18 (j) of the Commission's rules, and the Commission must resolve this disagreement by issuing a declaratory ruling or clarification. The public safety organizations believe that the rule should be construed to mean that a PSAP need be capable of using the Phase II data when the carrier provides Phase II service. APCO at Pg. 3; NENA at Pg. 2; North Carolina Wireless 911 Board at Pgs. 2-3. The carriers all assert that the text of Section 20.18 (j) is clear on its face and unambiguously provides that the PSAP must be capable of using the Phase II data at the time it makes the request to the carrier. Cingular at Pg. 2; Sprint PCS at Pg. 3; VoiceStream at Pgs. 2, 5; Western Wireless at Pgs. 2-3; Verizon at Pg. 4; Qwest Wireless at Pg. 2; US Cellular at Pg. 2.

But, no matter how hard they try, the carriers cannot add words to Section 20.18 (j) which are not there. The rule provides as follows:

The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services

required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

47 C.F.R. §20.18 (j).

The text of the rule does not say when the PSAP must be capable of receiving and utilizing the data elements associated with Phase II service, and the carriers' arguments to the contrary cited above should be dismissed. The rule says "has requested" and "is capable." The carriers do not and cannot explain the change of tense. They need it to say "has requested" and "was capable" to support their argument that the rule is clear on its face. But, it does not say that, and thus the carriers' argument that Richardson's petition fails under the clear text of the rule has no merit. As NENA, APCO, and the North Carolina Wireless 911 Board all argue, the text of the rule is certainly susceptible of the interpretation urged by Richardson in its petition.

The carriers, in implicit recognition that their argument about the text of the rule will not carry the day, also relied on snippets from the Second Memorandum Opinion and Order and, to a lesser extent, snippets from the First Report and Order in this proceeding to argue that the Commission has already decided the question posed by the Richardson petition in the Second Memorandum Opinion and Order and the First Report and Order. VoiceStream at Pgs. 2, 6, 7; Western Wireless at Pg. 3; Verizon at Pgs. 2, 5; Sprint PCS at Pg. 3; Qwest Wireless at Pg. 3; Cingular at Pgs. 2-3; US Cellular at Pgs. 2-3. This argument, too, fails because the Orders, while establishing the Commission's purposes and goals in adopting the E911 rules and providing guidance which can be used to construct an interpretation of Section 20.18 (j), do not definitively answer the question posed by the Richardson petition.

As already noted, the Commission's statement in paragraph 69 of the Second Memorandum Opinion and Order, made in justifying its decision to retain the cost recovery

requirement for PSAPs, that carriers should not be forced to make investments in response to a PSAP that is not ready to use the E911 information does not resolve this matter. The Commission was just saying that “(w)e view our cost recovery provision as a component of the PSAP’s capability of receiving and utilizing the data elements of the E911 services utilizing the data elements of the E911 services.” 14 FCC Rcd at 20878, ¶69. Moreover, the question presented here on this record is whether the Commission will permit VoiceStream to make a unilateral, speculative determination that a PSAP is not ready without VoiceStream having taken the time to discover the true facts, as set forth and verified herein, namely, that the PSAP has the necessary funds on hand and will be ready. No one wants carriers to make unnecessary investments, but that is certainly not the Commission’s only or even primary goal in adopting the E911 rules. The question posed here by Richardson is, taking into account the totality of the Commission’s goals and objectives in establishing the E911 rules, whether the Commission intended to permit the carriers to decide unilaterally and without any basis in fact that the investment required to provide Phase II service is unnecessary and therefore need not be made. That question is not resolved by the selectively quoted snippet from paragraph 69, and thus the Commission should issue the declaratory ruling requested by Richardson in its petition.

Likewise, the other snippets of the Second Memorandum Opinion and Order cited by the carriers do not resolve the question presented by Richardson’s petition. In paragraph 14, the Commission did state that it was a prerequisite to a carrier’s obligation to provide Phase II service that it has received a request from a PSAP that has the capabilities of receiving and using the data. But again, the question is at what point in time the PSAP must have the capabilities, when it made the request or prior to the initiation of service by the carrier. Elsewhere, in paragraph 6, the Commission wrote that “before a carrier is required to provide E911 services

pursuant to a PSAP request, the PSAP must have the means of covering its costs of receiving and utilizing the E911 information to ensure the request is valid.” 14 FCC Red at 20853. The foregoing passage establishes that Richardson’s request was “valid” because Richardson does have a cost recovery mechanism, even though VoiceStream turned down Richardson’s request as invalid. It is true that in paragraph 67, the Commission wrote that carriers cannot fulfill their obligations until the States’ 911 systems are capable of receiving and utilizing the E911 information so that PSAPs can make a valid request for the service. But, the statement is made in the midst of a paragraph devoted to the retention of the PSAP cost recovery mechanism, which again the Commission treated as a proxy for PSAP readiness. Although the carriers cited the portion of paragraph 67 which they like, no carrier dealt with the context of the paragraph, just as no carrier dealt in its comments with the foregoing quote from paragraph 6, which also appears in Richardson’s petition at page 4 of Richardson’s petition.²

It will not speed the actual implementation of E911 to allow a carrier to decide unilaterally that a PSAP will not be ready. Taking such an interpretation of Section 20.18 (j) will not bring the benefits of enhanced 911 service to the public. Sprint, Verizon, and VoiceStream try to contend that they cannot honor a request such as Richardson’s because they will have higher priority requests. But, they do not have such requests now. They cannot make any serious contention that their resources are constrained now, with Phase II service not yet in place

²Although VoiceStream accuses Richardson of repeating a request for reconsideration by the public safety community so that the parties would deploy E911 capabilities together rather than in sequence (VoiceStream Comments at Pg. 2), the Second Memorandum Opinion and Order did not discuss that request. In any event, Richardson is not repeating that request. Richardson is seeking the proper interpretation of the Commission’s rules, which is perfectly appropriate in light of the fact that the Commission did not discuss the sequencing issue just as the Commission has never before resolved the apparent ambiguity in Section 20.18 (j).

anywhere. If the carriers need relief because they are overwhelmed with Phase II requests, let them come to the Commission for relief. But, that is not the case at present. The truth is that VoiceStream cannot identify any other PSAPs it needs to service ahead of Richardson because it is not ready to provide Phase II service to any PSAP. Granting Richardson's petition will spur VoiceStream and other carriers to bring Phase II service to the public, the very result the Commission sought to achieve in its Orders adopting the rules. Second Memorandum Opinion & Order, 14 FCC Rcd at 20852; Third Report and Order, 14 FCC Rcd at 17392.

The carriers do not fare any better in selectively quoting snippets from the First Report & Order, 11 FCC Rcd 18676 (1996). See Sprint PCS at 3; VoiceStream at 2, 6; Qwest Wireless at Pg. 3; US Cellular at Pgs. 2-3; Verizon at Pg. 2, 5. Paragraph 11 does contain the "is capable" language which appears in Section 20.18 (j), but in the rule, the "has requested" language also appears, which together is ambiguous as already shown. The First Report & Order does not contain any explanation for the wording of Section 20.18 (j) and thus does not provide a definitive answer to Richardson's petition.

As a result, the Commission must issue a declaratory ruling to resolve Richardson's petition, and cannot simply hold that the matter is squarely resolved by the rule or the Commission's prior Orders. The Commission must adopt a reasonable approach which encourages the deployment of E911 to protect the public safety, while being fair both to the carriers and the PSAPs. There is no good reason, on this record, to doubt the good faith of a PSAP which has the financial resources to support Phase II and which has devoted, and is continuing to devote, the time and attention to make Phase II services a reality for its citizens. Richardson does not want to subject VoiceStream or any other carrier to any needless expenditure. Richardson just wants to have the capability to protect its citizens and does not

wish to face unnecessary delays in bringing this service to its citizens.

III. Richardson's Petition Is Not Procedurally Defective

The carriers contend that Richardson's petition is procedurally defective because they claim that Richardson is seeking adoption of a new rule or late reconsideration via a petition for declaratory ruling. Cingular at Pgs. 4-5; Sprint PCS at Pg. 4; VoiceStream at Pgs. 5-10; Western Wireless at Pgs. 4-5; Verizon at Pgs. 9-10; Qwest Wireless at Pgs. 5-6; US Cellular at Pgs. 4-5. However, the carriers misperceive Richardson's petition. As set forth above, Richardson is not seeking adoption of a new rule. It merely seeks clarification or a declaratory ruling as to the proper interpretation of the existing rule, which is ambiguous. Likewise, Richardson is not seeking reconsideration of any prior Commission order. No prior Commission order squarely addressed the question posed by Richardson's petition.

The Commission has the legal authority both under Section 554 (e) of the Administrative Procedure Act, 5 U.S.C. §554 (e), and Section 1.2 of its rules to issue a declaratory ruling to resolve a controversy about the proper interpretation of a Commission rule. The cases and other authorities cited by the carriers do not undermine or call into question the Commission's authority to issue a declaratory ruling under these circumstances to clarify or declare the proper interpretation of its rules. For this reason, Richardson's petition is procedurally proper.

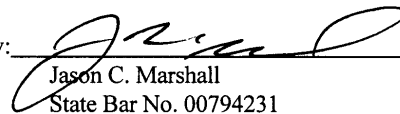
IV. Conclusion

Wherefore, for the foregoing reasons, the City of Richardson, Texas respectfully requests that the Commission grant its petition for clarification and/or declaratory ruling.

Respectfully submitted,

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DECLARATION

I, Dennis Moeller, do hereby declare under penalty of perjury that I have read the foregoing Reply in Support of Petition for Clarification and/or Declaratory Ruling and that I have personal knowledge that the factual statements set forth therein are true and correct.



Dennis Moeller
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CERTIFICATE OF SERVICE

I, Jason C. Marshall, do hereby certify that a true and correct copy of the foregoing was sent by U.S. mail, on this 3rd day of May 2001, to the following persons:

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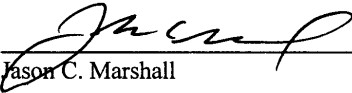
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